

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

|   |                                       |
|---|---------------------------------------|
| <b>IN RE PHARMACEUTICAL INDUSTRY<br/>AVERAGE WHOLESALE PRICE<br/>LITIGATION</b> | ) <b>MDL No. 1456</b><br>)            |
|   | ) <b>Master File No. 01-12257-PBS</b> |
|   | )                                     |
|   | )                                     |
|   | ) <b>Judge Patti B. Saris</b>         |
| <b>THIS DOCUMENT RELATES TO:</b>  | )                                     |
|   | )                                     |
| <i>City of New York, et al. v.</i>  | )                                     |
| <i>Abbott Laboratories, et al.</i>  | )                                     |
| <b>Civil Action No. 04-cv-06054 et al.</b>                                      | )                                     |
|   | )                                     |

**NEW YORK STATE DEPARTMENT OF HEALTH, MARK RICHARD BUTT,  
MARY ALICE BRANKMAN, MICHAEL A. FALZANO AND PLAINTIFFS'  
CROSS-MOTION TO QUASH SUBPOENAS ISSUED BY DEFENDANTS TO  
THE NEW YORK STATE DEPARTMENT OF HEALTH AND/OR ITS  
CURRENT AND FORMER EMPLOYEES**

The New York State Department of Health, Mark-Richard Butt, Mary Alice Brankman and Michael A. Falzano, by and through the New York Attorney General and Plaintiffs (hereinafter collectively referred to as "Movants") respectfully move pursuant to Rule 45 of the Federal Rules of Civil Procedure to quash subpoenas issued by Defendants to the New York State Department of Health and/or its current and former employees.

This cross-motion is supported by the accompanying Memorandum in Opposition to Defendants' Motion to Compel and in Support of Movants' Cross-Motion to Quash; Exhibit A (Defendants' December 7, 2007 Subpoena served on the New York State Department of Health); Exhibit B (Defendants' January 15, 2008 Subpoena For Documents and Deposition Testimony to Mark-Richard Butt); Exhibit C (Defendants' January 15, 2008 Subpoena For Documents and Deposition Testimony to Mary Alice

Brankman); Exhibit D (Defendants' January 15, 2008 Subpoena For Documents and Deposition Testimony to Michael A. Falzano); Exhibit E (Relevant Excerpts from the Transcript of Motion Hearing before Magistrate Judge Marianne B. Bowler, September 19, 2006); and the Declaration of Gregor N. Macmillan, Director of the Bureau of Health Insurance Programs at the New York State Department of Health, dated February 28, 2008. A proposed form of order is also annexed hereto.

Dated: March 4, 2008

Respectfully Submitted:

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Attorney General of the State of New York  
Attorney for Subpoenaed Non Party  
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/s/ Gregor N. Macmillan  
By: Gregor N. Macmillan, Esq. (*pro hac pending*)  
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and Michael A. Falzano  
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**City of New York and all captioned  
Counties except Nassau and Orange, by**

**KIRBY McINERNEY, LLP**  
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/s/ Joanne M. Cicala

By: Joanne M. Cicala (JC 5032)  
James P. Carroll Jr. (JPC 8348)  
Aaron D. Hovan (AH 3290)

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| Civil Action No. 04-cv-06054 et al.                                       | ) |  |

**[PROPOSED] ORDER GRANTING MOVANTS' CROSS-MOTION  
TO QUASH SUBPOENAS ISSUED BY  
DEFENDANTS TO THE NEW YORK STATE DEPARTMENT OF HEALTH  
AND/OR ITS CURRENT AND FORMER EMPLOYEES**

Having considered each of the parties' submissions with respect to the Movants' Cross-Motion to Quash Subpoenas Issued by Defendants to the New York State Department of Health and/or Its Current and Former Employees, the Court hereby grants Movants' motion.

It is hereby ordered that pursuant to Federal Rule 45 the subpoenas issued by defendants to the New York State Department of Health, Mark-Richard Butt, Mary Alice Brankman and Michael A. Falzano are hereby quashed.

Dated: \_\_\_\_\_

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Hon. Marianne B. Bowler  
United States Magistrate Judge

**Certification Pursuant to Local Rule 7.1**

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that she conferred with counsel for defendants on the issues raised in this motion and has not been able to reach agreement.

Dated: March 4, 2008

/s/ Joanne M. Cicala  
Joanne M. Cicala

**CERTIFICATE OF SERVICE**

I, Aaron D. Hovan, hereby certify that I caused a true and correct copy of the foregoing Cross-Motion To Quash Subpoenas Issued by Defendants to the New York State Department of Health and/or Its Current and Former Employees to be served on counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: March 4, 2008

/s/ Aaron D. Hovan  
Aaron D. Hovan  
Kirby McInerney LLP